

**In re: J.R. SIMPLOT COMPANY.  
PVPA Docket No. 02-0001.  
Order to Show Cause.  
Filed September 12, 2002.**

Robert Ertman, for Commissioner.  
Richard C. Peet, for Petitioner.  
*Ruling issued by William G. Jenson, Judicial Officer.*

J.R. Simplot Company [hereinafter Petitioner] instituted this appeal of a decision by Paul M. Zankowski, Commissioner, Plant Variety Protection Office, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Commissioner], by filing "Petition Under 7 C.F.R. § 97.300 For Recording PVP Application No. 9600256 in the Name of J. R. Simplot Company" [hereinafter Petition] on June 28, 2002. Petitioner instituted the proceeding under the Plant Variety Protection Act, as amended (7 U.S.C. §§ 2321-2583) [hereinafter the PVPA]; and the regulations promulgated pursuant to the PVPA (7 C.F.R. pt. 97) [hereinafter the Regulations]. Petitioner seeks review of the Commissioner's May 13, 2002, denial of Petitioner's request to record assignment of PVP Application No. 9600256.

On August 23, 2002, the Commissioner filed "Answer to Petition for Recording of Abandoned Application." On September 10, 2002, Petitioner filed "Simplot's (1) Reply to Commissioner's Answer to Petition for Recording of Application and (2) Suggestion that Petition be Deferred Pending Disposition of Upcoming Related Petition" wherein Petitioner suggests that I defer the decision in this proceeding until such time as an agency decision is issued on a petition that Petitioner intends to file seeking review of the Commissioner's July 25, 2002, denial of Petitioner's request for revival of PVP Application No. 9600256.

No later than October 1, 2002, the Commissioner is ordered to show cause why I should not defer seeking the advice of the Plant Variety Protection Board in this proceeding<sup>1</sup> and why I should not defer a decision in this proceeding until after an agency decision has been issued regarding Petitioner's contemplated petition regarding the revival of PVP Application No. 9600256.

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<sup>1</sup>The PVPA and the Regulations require that I seek and receive advice from the Plant Variety Protection Board before deciding the appeal in this proceeding. (See 7 U.S.C. § 2443; 7 C.F.R. § 97.302(a).)